IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.699 of 2001

M.Sajjan Raj Nahar .. Appellant/Complainant
rep by his Power Agent,
Mr. G. Angamuthu,
Authomobile Financier,
No.277, Main Road,
Mettupalayam 641 301,
Coimbatore District.

Vs.

Mr.A.Balasubramaniam .. Respondent/Accused

Prayer:- This appeal has been preferred against the judgment dated 1.12.2000 made in STC.No.174 of 1998 on the file of the Judicial Magistrate, Mettupalayam.

For Appellant :Mr.R.Balaj

For Respondent : Mr. Deivandran
for M/s. G. R. Swaminathan.

JUDGMENT

This appeal has been preferred against the judgment in STC.No.174 of 1998 on the file of the Judicial Magistrate, Mettupalayam. The complaint under Section 200 of Cr.P.C., was filed by the complainant under Section 138 of the Negotiable Instruments Act against the accused alleging that the accused had drawn a cheque on 14.10.1997 for Rs.3 lakhs to discharge a subsisting liability and when the said cheque was presented in the bank the same was dishonoured on the ground that there was no sufficient funds in the account of the drawer of the cheque.

2.After taking cognizance of the offence, the learned Judicial Magistrate, after recording the sworn statement of the complainant, had issued summons to the accused and on his appearance copies under Section 207 of Cr.P.C., were furnished to the accused and when the charges were explained to him and

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questioned he pleaded not guilty. On the side of the complainant, the power of attorney holder of the complaint was examined as P.W.1 and Ex.P.1 to Ex.P.13 were exhibited

3.The power of attorney holder for the complainant in his evidence would depose that the complainant is a finance institution and that he (P.W.1) is the power of attorney holder. Ex.P.1 is the power of attorney in favour of P.W.1 executed by the complainant. According to P.W.1, the accused for the purchase of Ashok Layland bus bearing registration No.KL-9B-846 had borrowed Rs.4,50,000/- on 25.3.1994 and entered into an higher purchase agreement under Ex.P.8 and that as per the terms of Ex.P.8 the accused had to repay the loan amount in 30 monthly instalments and has to pay Rs.22,500/- towards the first instalment and the subsequent instalments are to be paid at the rate of Rs.21,500/- per instalment. But the accused had failed to pay the instalment regularly and he has committed default in payment. Hence, he complainant had seized the bus bearing registration No.KL-9B-846 and sold the same in the public auction and adjusted the sale proceeds of the bus towards the balace of the amount due under higher purchase agreement Ex.P.8. According to P.W.1 to discharge the entire due under the higher purchase agreement Ex.P.8 the accused had drawn the impugned cheque Ex.P.2 dated 14.10.1997 in favour of the complainant. When the cheque was presented in Canara Bank, Mettupalayam branch on 7.11.1997 the same was returned with an endorsement that there is no sufficient funds in the account of the drawer on 7.11.1997 itself. The complainant had issued notice as contemplated under Section 138(2) of the Negotiable Instalments Act under the original of Ex.P.6. The accused had acknowledged the same under Ex.P.7. Ex.P.5 & Ex.P.6 are the memo issued by the bank along with Ex.P.2-impugned cheque. Ex.P.7 is the acknowledgement. Ex.P.9 is the seizure notice for the above said bus, which was received by the accused under Ex.P.10. Ex.P.11 is the receipt issued by George for having purchased the bus in the auction. Ex.P.12 is the copy of the account maintained by the complainant. Ex.P.13 is also an account maintained by the complainant for his insurance particulars.

4.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he would deny his complicity with the crime. On the side of the accused D.W.1 and D.W.2 were examined and Ex.D1 to Ex.D.4 were marked. After going through the evidence both oral and documentary, the learned trial Judge has come to the conclusion that the complainant has failed to prove that the impugned cheque Ex.P.2 was drawn only for discharging a subsisting debt and accordingly dismissed the complaint, which necessitated the complainant to prefer this appeal.

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5.Now the point for determination in this appeal is whether Ex.P.2-impugned cheque was drawn by the accused to discharge a subsisting debt to warrant conviction against the accused under Section 138 of the Negotiable Instruments Act?

6.The Point:-The learned trial Judge while dismissing the complaint has given a valid reason in his judgment at para 16. Ex.P.12 is the statement of accounts on which the complainant had placed his reliance to show that on the date of drawal of Ex.P.2-cheque by the accused, there was a balance of Rs.3,53,000/- under Ex.P.8, higher purchase agreement entered into between the complainant and the accused. It is the admitted case of the complainant that since the accused had committed default in payment of the instalments under Ex.P.8, higher purchase agreement, the bus bearing registration No.KL-9B-846 was seized after issuing Ex.P.9-notice and the same was sold in public auction to one George, who had issued Ex.P.11-voucher dated 12.9.1997 for having purchased the bus bearing registration No.KL-9B-846 for a sum of Rs.2 lakhs. It is the case of the complainant that even after adjustment of this Rs.2 lakhs, the sale proceeds of the bus under Ex.P.11, towards the balance due from the accused to the complainant, still here is balance of a sum of Rs.3,53,000/- as per Ex.P.12 and only to discharge the balance amount after the said adjustment, the accused had drawn the impugned cheque Ex.P.2. But if the said sum of Rs.2 lakhs under Ex.P.11 was adjusted towards the balance of Rs.3,53,000/- as shown under Ex.P.12, then the balance amount will be Rs.1,53,000/-. But Ex.P.2-cheque was drawn by the accused for a sum of Rs.3 lakhs. Even in the notice under Ex.P.6 no details regarding the balance due under Ex.P.8, higher purchase agreement, was given. Under such circumstances, the complainant cannot take shelter under Section 138 of the Negotiable Instalments Act and it cannot be said that only to discharge a subsisting liability the impugned cheque under Ex.P.2 was drawn by the accused in favour of the complainant as rightly held by the learned trial judge. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge in STC.No.174 of 1998 on the file of the Judicial Magistrate, Metuppalayam. Point is answered accordingly.

7.In fine, the appeal is dismissed confirming the judgment in STC.No.174 of 1998 on the file of the Judicial Magistrate, Mettupalayam. At this juncture, the learned counsel for the appellant would contend that he has filed an application under Section 91 of Cr.P.C., for the production of an additional

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document and the same was dismissed by the trial Court. But the fact remains that he has not agitated or challenged the said order of the Judicial Magistrate.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate,
Mettupalayam.

2.-do-The Chief Judicial Magistrate,
Coimbatore.

+ 1 cc to Mr. G. R. Swaminathan, Advocate SR No. 44400

+ 1 cc to M/s. Ram & Ram Associates SR No. 44151

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